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in various States. In a chapter on The Control of the Budget the "means employed for ensuring the honest execution of the budget" are thoroughly discussed. Here is touched the extremely vital problem of an efficient audit. With careful and honest auditing such frauds as those connected with the Pennsylvania State capitol could not have been perpetrated. The general criticism of our State systems is that the auditing power is not sufficiently independent of partisan politics. Apparently no good and sufficient reason can be advanced for this condition, for with ample provision for appeal to the legislature in most States there need be no fear of placing with the auditing authority a power too independent and arbitrary.

Dr. Agger has done a thorough and painstaking piece of work. The volume cannot fail to be one of value to students of public finance, as well as to those interested in the legislative and administrative methods of our State governments.

CHARLES C. WILLIAMSON.

Select Essays in Anglo-American Legal History. Compiled and Edited by a Committee of the Association of American Law Schools. Volume I. (Boston: Little, Brown and Company. Pp. 847. 1907.)

The appearance of this, the first of three volumes of selected essays dealing with Anglo-American legal history, is an event of considerable importance, marking as it does the interest which the associated law schools of this country have in the history of the subject which it is their province to teach. This historical interest is, in turn, an evidence of an increasing perception that the law is a subject which, for its proper comprehension, requires not simply a memorized knowledge of its present substantive principles and a working acquaintance with the actualities of its practice and procedure, but a philosophical appreciation of the principles upon which its specific principles are based. This philosophical appreciation, it is recognized, may be gained only by the employment of the comparative and historical methods.

The value of the comparative method is especially manifest in the field of legislation. Here, where the aim is the repeal or amendment of existing laws, or the enactment of new ones, a knowledge of the experience of other communities is practically indispensable. But if the comparative method is especially useful in the enactment of law, the his-

torical method is preëminently valuable in its explanation. Especially, of course, is this true as to the common or non-statutory law. Here the connotations of the terms employed are often so special, and the principles so qualified that an exact understanding of them demands a knowledge of the peculiar circumstances out of which they have arisen. In this way there is learned the special facts to which the rules have been applied, and the corresponding extensions and limitations of meanings which they have received. Thus, when the present time is reached, the principles appear not as abstract propositions but as completely interpreted in the history of the lives they have lived.

For legal instruction the historical method has merits to recommend it other than that of its interpretative efficiency. In the first place it is adapted to pedagogic use in that it proceeds from the simple to the complex. Principles are first disclosed in their elementary form, and their subsequent refinements gradually and logically explained. In the second place, it is a method by which the student is kept in constant contact with realities and thus his interest continuously maintained. The late Professor Thayer, addressing the American Bar Association in 1895, upon The Teaching of English Law at Universities, said : "I set down first in importance thorough historical and chronological exploration, because in this lies hidden the explanation of what is most troublesome in our law, and because in this is found the stimulus that most feeds the enthusiasm and enriches the thought and the instruction of the matter. The duller subjects kindle when touched with the light of historical research, and the most recondite and technical fall into the order of common experience and rational thought."

More important, however, than even pedagogic merits is the value of legal history in giving to the student a knowledge of the law as a living developing force in the community. Its history shows that the great body of the laws of a country has its roots far back in the past, is closely interwoven and identified with the nation's institutions, and with the thought and life of the people—that legal principles are in fact, in most cases, the definition of the people's customary habits, and the crystallized statements of their deepest ethical ideals. Thus the doctrine is taught that while in a developing country, no specific laws are to be regarded as immutable, the entire legal *corpus* constitutes an organic whole, an alteration of one part of which is apt to affect other parts, and that, therefore, changes should be made in such a manner as to preserve, as far as possible, existing rights, and that, above all, these changes should correspond to real needs, and reflect the true ethical

consciousness of the whole people and not ephemeral conditions or the demands of some selfish or unenlightened class.

The historical treatment of the law is often spoken of as synonymous with the science of historical jurisprudence. There is, however, a very considerable difference between the two, both as to scope and aim. The tracing of the historical development of the various substantive provisions of a given system of law—how they have come into being, the legislative sources whence they have been derived, the influences which have conditioned their contents, the organs through which they have received interpretation and application—these are the subjects of research for the historian of the law. The aim of the student of historical jurisprudence is different. His task is to discover the origin and to trace the development of the abstract juridical ideas that have found, and still find, their expression in the legal thought of a people. With the exact forms in which at different times these abstract conceptions may have found statement, or with the particular applications to which they may have been put, he is not concerned. His whole interest is with the underlying notions of the law. Holland has correctly declared the aim of jurisprudence to be the setting forth and the explaining of “those comparatively few and simple ideas which underlie the infinite variety of legal rules;” that “jurisprudence deals rather with the various relations which are regulated by legal rules than with the rules themselves which regulate those relations.” This being the aim and method of jurisprudence, historical jurisprudence must have for its province the tracing of the development of these abstract legal conceptions. Thus, to illustrate, the student of historical jurisprudence has first of all to discover and state the probable form in which the very idea of law first framed itself in the human mind, what theories were held as to its source, its sanction, its relation to religious dogma and to political command; next to learn how, through successive steps, the exact notion of a positive *jus civile* separated itself from the religious and ethical ideas with which it was at first associated. This done, the task is to take up, one after another, such elementary legal ideas as person, thing, act, event, property, contract, tort, crime, and the like, to show the definitions which they impliedly received in primitive law, and to trace their presence and varied meanings in the different stages of juridical thought. Thus, when this has been done for all the important notions involved in legal thinking, historical jurisprudence will exhibit the entire material of analytical legal thought clothed in historical garments.

The volume under review falls rather within the field of the history of

the law than within that of historical jurisprudence. It is composed of twenty-one selected essays, all of which, with the exception of one, have previously been published as essays, articles, or chapters of books. These essays are grouped under the title *General Surveys*, and sub-classified under the following heads: (1) Before the Norman Conquest, (2) From the Norman Conquest to the Eighteenth Century, (3) The American Colonial Period, (4) Expansion and Reform of the Law in the Nineteenth Century, (5) Bench and Bar from Norman Times to the Nineteenth Century.¹

In the two volumes which are to follow, essays, articles, and chapters dealing with the history of particular topics and divisions of the law are to be reprinted. The three volumes now announced are to deal only with the private law. All matters of public law, including the history of constitutional law and of municipal corporations are excluded. The possibility is intimated, however, that a later series may be made to include them, a possibility which it is sincerely 'to be hoped will be realized.

In the preface, the committee appointed by the president of the Association of American Law Schools to make the selection and prepare the volumes for publication, in explanation of the purpose of and need for

¹ The table of contents is the following:

Part I. Before the Norman Conquest—(1) Prologue to History of English Law, F. W. Maitland; (2) The Development of Teutonic Law, Edward Jenks; (3) English Law before the Norman Conquest, Sir F. Pollock.

Part II. From the Norman Conquest to the Eighteenth Century—(4) The Centralization of Norman Justice under Henry II, Alice Stopford (Mrs. John Richard) Green; (5) Edward I, the English Justinian, Edward Jenks; (6) English Law and Renaissance, Frederic William Maitland; (7) Roman Law Influence in Chancery, Church Courts, Admiralty, and Law Merchant, Thomas Edward Scrutton; (8) The History of the Canon Law in England, William Stubbs; (9) The Development of the Law Merchant, W. S. Holdsworth; (10) A Comparison of the History of Legal Development at Rome and in England, James Bryce.

Part III. The American Colonial Period—(11) English Common Law in the Early American Colonies, Paul Samuel Reinsch; (12) The Extension of English Statutes to the Plantations, St. George Leakin Sioussat; (13) The Influence of Colonial Conditions, as Illustrated in the Connecticut Intestacy Law, Charles McLean Andrews.

Part IV. Expansion and Reform of the Law in the Nineteenth Century—(14) Anticipations under the Commonwealth of Changes in the Law, R. Robinson; (15) Bentham's Influence in the Reforms of the Nineteenth Century, John Forrest Dillon; (16) Progress in the Administration of Justice during the Victorian Period, Charles Sygne Christopher, Baron Bowen; (17) The Development of Jurisprudence during the Nineteenth Century, Joseph Henry Beale, Jr.; (18) The Extension of Roman and English Law throughout the World, James Bryce.

Part V. Bench and Bar from Norman Times to the Nineteenth Century—(19) The Five Ages of the Bench and Bar of England, John M. Zane; (20) A Century of English Judicature, Van Vechten Veeder; (21) An American Law Student a Hundred Years Ago, James Kent.

the work say: "The present state of our knowledge of the history of law may be likened to an unfinished building, whose foundations have been laid and whose frame and beams have been erected. The roof, the walls, the floors, the furnishing and decoration are yet lacking. Its scope and internal plan, its architecture and its relation of parts, can be already plainly seen. But it cannot yet be inhabited; and many kinds of workmen must labor upon it. These foundations are the volumes of Sir Frederick Pollock and Professor Maitland—resting upon the still deeper Germanic caissons of Prof. Heinrich Brunner and his co-workers. This frame and these cross-beams are, on the one hand, the few larger monographs, from Mr. Justice Holmes' *The Common Law*, and Professor Bigelow's *Anglo-Norman Procedure*, of thirty years ago, to the Selden Society's source books and Mr. Holdsworth's recent first volume; and, on the other hand, the more numerous essays and chapters of the author's represented in these present volumes. But, until now, most of these lesser structural members of the framework have lain scattered about upon the ground, here and there, ready for use, and yet not fully serviceable because not easily accessible and not assembled in their relations to each other and to the whole. It is the purpose of these volumes to assemble and make accessible these valuable parts of the structure of our legal history. * * * To the profession, then, and to all its members, whether in school or out of it, we commend this collection, in the hope that it may bring into general knowledge the main part of the historical achievements which are not yet contained in independent volumes, and that it may help to stimulate a deeper and wider knowledge of the present meaning of our law as seen in the light of the past."

Regarding the judgment with which the selection of material has been made, each must judge for himself, and each will probably find ground for disappointment that certain writings have not been included. The reviewer may only say for himself that, in his estimation, the selection has been a most discriminative one. The committee to whose disinterested work we are indebted for the volumes is composed of Prof. John H. Wigmore of Northwestern University (chairman), Ernst Freund of the University of Chicago, and William E. Mikell of the University of Pennsylvania.

W. W. WILLOUGHBY.